the price was unreasonably low, we submit that the indictment contains no language which can fairly be interpreted as alleging that $250,000 was an unreasonably low price, or that McGinnis had any reason to suspect that the price was inadequate. The record contains no evidence that the price was unreasonably low (see Pet. No. 287, pp. 12a-13a).

The practice of substituting Mersey for International is followed three times in the same sentence. Although Mersey was a principal in International and acted as its agent, there is no reason for substituting Mersey's name for that of the corporate defendant in this manner.

2. The same sentence, on page 4, speaks of "the payment by Mersey (sic) of $71,500 to McGinnis, Benson and Glacy." Insofar as this statement implies that McGinnis, Benson and Glacy received joint payment, it is misleading. In fact, the payments were made separately, as the Government impliedly admits at page 8 of its brief. We raise this point because the implication that the payment was received jointly would lend credence to the Government's theory of a concert of action.

3. In footnote 4, at the bottom of page 6, the Government sets forth the substance of the transcript of a telephone conversation between *Mersey* and *Bugbee,* in which *McGinnis* is quoted as having said to Mersey, "Why in the hell would Atkinson want to come to me, then, if you are handling it?" (Ex. 80, R. 825). The quotation marks in this passage are misleading, for it is not McGinnis who is being quoted, but rather *Mersey* allegedly telling Bugbee what McGinnis had allegedly said.

4. Near the bottom of page 7, the brief states that "McGinnis, upon seeing the revised memorandum, told the clerk that it was 'satisfactory' ". This statement, and the language preceding it, is misleading in that it implies that McGinnis knew that what he was seeing was a revision

of an earlier draft. In fact, there was no evidence that McGinnis had ever seen the original memorandum, or knew of its source or existence.

5. In footnote 5, on page 8, the Government states that in each of the other 28 proposed sales of B & M property, the agenda showed the name of the B & M staff sponsor. This statement is flatly contradicted by the evidence (Ex. 89, Scheds. A-1 through A-28). (See Pet. No. 287, pp. 15a-17a). The misstatement is prejudicial, since it implies that the proposal in question was significantly unusual, and thus, perhaps, that McGinnis would have noticed this and made an investigation unless he was a party to the alleged conspiracy.

6. In the last full paragraph on page 8, the Government states that McGinnis received $35,000 from International "during the four-month period (August 13-December 16) following the sale". In fact, McGinnis was paid on two dates, October 10 and December 3, 1958 (Ex. 3A, 3B, 3C; R. 766, 767, 768). The statement is prejudicial because it implies a series of regular payments made over an extended period immediately following the sale, thus tending to support an inference that the sale and the payments were related.

7. Commencing at line 5 on page 9, the brief states that McGinnis admitted that the alleged services for International would have involved a conflict of interest between himself and the B & M. In fact, the statement to which the Government refers concerns another *proposed* transaction, and not the services for International for which McGinnis contended he was paid the $35,000 (R. 401-404). This error is highly prejudicial, since it amounts to an admission that McGinnis participated in, and was paid for, a violation of the trust reposed in him as an officer of the B & M. Actually, the opposite was true, since Mc-

Ginnis did not participate in the second transaction primarily because it would involve a conflict of interest (R. 403).

8. In the next sentence on page 9, the brief states that the stubs for McGinnis' checks from International were marked "loans". No evidence was presented concerning the stubs for McGinnis' checks. However, the vouchers which were attached to the checks were introduced (Ex. A, B, and R; R. 909, 953). Two of these were marked "Executive Consultant Fee-MacArthur Matter" (R. 909). Only the third was marked "Loan" (R. 953). McGinnis testified that upon receipt of the third check he called the bookkeeping department at International to inform them of the error and requested them to "change it" (R. 387).

II. The Government Has Failed To Substantiate McGinnis' Participation In the Alleged Conspiracy.

On page 15, the Government summarizes the evidence which allegedly demonstrates the participation of each of the individual defendants in the conspiracy. Commencing on the tenth line from the bottom of the page is the only sentence which purports to describe McGinnis' actions in furtherance of the conspiracy: "McGinnis persuaded the directors to approve the sale on the basis of the misleading memorandum which had been changed to eliminate the disclosure that Benson and Glacy were the sponsors of the proposal."

There is no evidence that McGinnis "persuaded" the directors to approve the sale. In fact, there was undisputed testimony that there was no discussion of the sale at the directors' meeting (R. 323).

There is no evidence, direct or circumstantial, that McGinnis knew of the original memorandum, or that it had

been revised, or that the proposal had come from Benson and Glacy.

In short, this statement in the government's brief is wholly unwarranted, as is the conclusion which it allegedly supports.

Respectfully submitted,

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